IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 33211 of 2007(D)

PETITIONER:

MUHAMMED HABEEB, AGED 41 YEARS,
S/O.ABDULLAKUTTY, VAYALINKARA HOUSE,
NARIKUNNI, KOZHIKODE.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

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1. ASSISTANT EXCISE COMMISSIONER,
PALAKKAD.

2. SUB INSPECTOR OF POLICE,
TOWN POLICE STATION,
KOZHIKODE.

3. SUB INSPECTOR OF POLICE,
KOZHINJAMPARA POLICE STATION,
PALAKKAD DISTRICT.

BY ADV. SRI. ANU SIVARAM, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN , J

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W.P.(C). NO. 33211 OF 2007

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Dated this the 20th day of November, 2007.

JUDGMENT

A vehicle was seized in connection with the alleged commission of an abkari offence. Confiscation proceedings in relation to that vehicle are under way. The petitioner filed an application before the Judicial Magistrate for third party custody of that vehicle. He was relegated to the excise official in view of the pending confiscation proceedings.

2. The petitioner applied, essentially, for an order for temporary custody of the vehicle, by offering solvent sureties. The excise authority took the stand that in terms of Rule 4(2) of the Kerala Abkari (Disposal of Confiscated Articles) Rules 1996, the vehicle could be released only by imposing the conditions fixed by that rule.

3. Arguments are addressed by the learned counsel for the petitioner and the learned Government Pleader, regarding the applicability of that rule.

4. On behalf of the petitioner, it was contended that the the said rule would not apply to the facts of this case because there is absolutely no basis to assume that the petitioner was involved either in the commission of offence or connected with that in any way. It is also argued that there is no reason to assume, infer or presume, that the transportation of the contraband in the vehicle was with the knowledge or consent of the petitioner. The basis of this contention is that, according to the petitioner the vehicle was stolen from his custody more than an year ago and he had promptly lodged a proper complaint before the police, which has been registered and investigation is proceeding. It also appears that there was an attempted deface of the number imposed on the engine of the vehicle.

5. The learned Government Pleader argued that Rule 4(2) applied, particularly when that rule is not under challenge and no deviation from that rule can be claimed without challenging the rule. Reference was also made to the judgment of the Division Bench in **Prasad v. Sub Inspector of Police** (2000 (2) KLT 790).

6. Whether Rule 4(2), within the zone of interpretation, can have application on the facts of this case is not being gone into. It appears to be a material on record that there is an FIR and investigation in that crime case is going on, that may be a ground relevant for an adjudication for which Section 67 C(2) would apply. Not only that, there also does not appear to be any rival claimant for the vehicle. The police papers would be relevant to decide the issue finally.

7. In the aforesaid circumstances, this writ petition is disposed of directing that the confiscation proceedings shall be concluded within an outer limit of three weeks from today after affording the petitioner an opportunity of being heard. The Assistant Commissioner, Palakkad shall forthwith call for a report from the Station House Officer of the Kozhikode Town Police Station in relation to FIR No. 191 registered on 15.09.2006. By the force of this judgment, the said police officer shall make such report available within a week of a request in that regard. The petitioner shall place his case in writing before the Assistant Excise Commissioner along with a copy of this judgment. The

petitioner is also directed to place a copy of this judgment before the Station House Officer of the Kozhikode Town Police Station. It shall be ensure that the time frame fixed in this judgment for competition of proceedings is treated as a parameter.

THOTTATHIL B. RADHAKRISHNAN, JUDGE.

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